

AMENDED IN ASSEMBLY APRIL 9, 2014
AMENDED IN ASSEMBLY MARCH 28, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2729

Introduced by Assembly Member Medina

February 21, 2014

An act to add Part 5.5 (commencing with Section 14100) to Division 3 of Title 1 of the Corporations Code, *to amend Section 63010 of, and to add Chapter 7 (commencing with Section 63090) to Division 1 of Title 6.7 of, the Government Code, and to amend Sections 10295 and 10335 of the Public Contracts Code, relating to business: state government.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2729, as amended, Medina. ~~California Economic Development Infrastructure Finance Act of 2014.~~ *Infrastructure financing.*

~~Existing law authorizes various methods to finance public facilities that are necessary to meet the needs of the state. Existing law authorizes~~

The Bergeson-Peace Infrastructure and Economic Development Bank Act establishes the California Infrastructure and Economic Development Bank (I-Bank), located, within the Governor's Office of Business and Economic Development, to, among other things, administer the California Small Business Financial Development Corporation Law and to oversee the Small Business Loan Guarantee Program. be governed by a specified board of directors. The act makes findings and declarations in this regard, provides definitions, and authorizes the board to take various actions in connection with the bank, including the issuance of bonds, as specified.

This bill, among other things, would revise the definition of economic development facilities to include facilities that are used to provide goods movement and would define goods movement-related infrastructure. The bill would revise the definition of port facilities to specifically reference airports, landports, waterports, and railports, and expand the definition of participating party to include an international governmental entity. The bill would make various technical changes.

~~This bill, bill would also enact the California Economic Development Infrastructure Finance Act of 2014, would 2014 to create the California Infrastructure Finance Center to administer the provisions of this act, as specified, under the oversight of the I-Bank. bank. This bill would authorize the creation of California infrastructure development corporations, as specified, and establish requirements for those corporations to secure participation rights, as part of forming public-private partnerships with the I-Bank bank in building infrastructure related to economic-related activities. Participation rights include a commitment by the state to use the California Infrastructure Development Corporation to deliver infrastructure projects. Participation rights also include the right of first refusal by the corporation to participate in public-private partnership projects (P3 projects) and if it should choose to participate, a preestablished minimum participation rate in financing each and all P3 projects. This bill would also provide an exemption from specified public contracting requirements for contracts entered into between the I-Bank bank and these corporations.~~

This bill would also establish conflict of interest provisions for persons implementing the act or participating in a California Infrastructure Development Corporation. This bill would make a violation of these provisions a felony, thereby creating a crime and a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Part 5.5 (commencing with Section 14100) is added to Division 3 of Title 1 of the Corporations Code, to read:

PART 5.5. PUBLIC-PRIVATE INFRASTRUCTURE
CORPORATIONS

CHAPTER 1. PARTICIPATION RIGHTS

Article 1. Introduction

14100. (a) The Legislature finds and declares that engaging the private sector in building infrastructure related to economic-related activities will further the opportunities of California businesses and workers.

(b) Without a modern infrastructure network comprised of roads, highways, railroads, and air, land, and seaports, California will be unable to remain sufficiently connected to the global economy.

(c) Finding appropriate means for partnering with private sector infrastructure developers must be undertaken in a thoughtful way that ensures workers, residents, and small businesses are not negatively impacted or result in an unreasonable ability to participate in the broader economy.

Article 2. Definitions

14101. Unless the context otherwise requires, the definitions in this section shall govern the construction of this chapter. The definitions in this chapter shall apply only to this chapter and not to any other chapter of this division.

(a) “Bank” means the California Infrastructure and Economic Development Bank.

(b) “Bank board” means the Board of Directors of the California Infrastructure and Economic Development Bank.

(c) “California Infrastructure Development Center” means the governmental unit within the bank, which is located within the Governor’s Office of Business and Economic Development, with the administrative responsibility for programs and activities authorized pursuant to this part.

(d) “Corporation” means any California infrastructure development corporation created pursuant to this part.

(e) “Directives and requirements” means a document adopted by the bank board setting forth policy direction as well as rules governing a particular subject area.

(f) “Executive director” means the Executive Director of the California Infrastructure and Economic Development Bank.

(g) “Participation rights” means a commitment by the state to use the California Infrastructure Development Corporation to deliver infrastructure projects. Participation rights include the right of first refusal to participate in each and all public-private partnership projects (P3 projects) and if it should choose to participate, a preestablished minimum participation rate in financing each and all P3 projects.

(h) “Program manager” means the manager of the California Infrastructure Development Center as appointed by the executive director of the bank.

Article 3. Program Manager

14103. The program manager shall do all of the following:

(a) Administer this chapter.

(b) Make recommendations to the executive director and the bank board on the approval or disapproval of the articles of incorporation. This determination shall be based upon the following:

(A) Review of the articles of incorporation and bylaws of the corporation to determine whether they contain the provisions required by this chapter and conform with the directives and requirements adopted by the bank board pursuant to this chapter.

(B) A determination as to whether the legislative intent expressed in Section 14100 shall be served by the proposed corporation.

(C) A determination as to whether the responsibility, character, and general fitness of the individuals who will manage the corporation command the confidence of the state, and warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter.

1 (D) A determination by the program manager that there is
2 significant need for a new corporation.

3 (c) Examine, or cause to be examined, at any reasonable time,
4 all books, records, and documents of every kind, and the physical
5 properties of a corporation. The inspection shall include the right
6 to make copies, extracts, and search records.

7
8 Article 4. Approval of the Corporation
9

10 14104. The bank board shall approve a new corporation
11 recommended by the program manager, based on an examination
12 of each of the following:

13 (a) Review of the articles of incorporation and bylaws of the
14 corporation to determine whether they contain the provisions
15 required by this chapter and conform with the directives and
16 requirements adopted by the bank board pursuant to this chapter.

17 (b) Determination as to whether the legislative intent expressed
18 in Section 14101 will be served by the proposed corporation.

19 (c) Determination as to whether the responsibility, character,
20 and general fitness of the individuals who will manage the
21 corporation command the confidence of the state and warrant the
22 belief that the business of the proposed corporation will be honestly
23 and efficiently conducted in accordance with the intent and purpose
24 of this chapter.

25 (d) Determination of the program manager that there is
26 significant need for a new corporation.

27
28 Article 5. New Corporations
29

30 14105. Upon approval by the bank board of an entity as a
31 corporation, an entity shall adopt or amend its articles of
32 incorporation to comply with the following:

33 (a) The name of the corporation shall include the words “a
34 California Infrastructure Development Corporation.”

35 (b) The purposes for which the corporation is formed, which
36 shall be those specified in Section 14101. This requirement shall
37 not be deemed to preclude a statement of powers.

38 (c) A geographical description of the corporation’s primary
39 service area. A primary service area may cover certain parts or the
40 entire state.

1 (d) The name and addresses of seven or more persons who are
2 to act in the capacity of directors until the selection of their
3 successors.

4 (e) That the corporation is organized pursuant to this chapter.

5 14106. If the bank board concurs with the findings of the
6 program manager pursuant to Section 14104, the bank board shall
7 direct the program manager to approve the articles of incorporation
8 and endorse the approval thereon and forward the same to the
9 Secretary of State for his or her approval and filing. Likewise, the
10 program manager shall review all amendments to the articles of
11 incorporation to ensure consistency with the purposes of this
12 chapter.

13 14107. (a) The corporation's existence as a California
14 Infrastructure Development Corporation begins upon the filing of
15 the articles with the Secretary of State and continues perpetually
16 unless otherwise expressly provided for by law.

17 (b) If a corporation is terminated from participation in all
18 programs, in order to continue its existence as a corporation
19 pursuant to Division 1 (commencing with Section 100) of the
20 Corporations Code the corporation shall amend its articles of
21 incorporation in accordance by removing the provisions required
22 by Section 14105, including an amendment to remove the words
23 "California Infrastructure Development Corporation," from the
24 corporate name, and shall no longer be registered with the Secretary
25 of State as a California Infrastructure Development Corporation.
26 A corporation shall not enjoy any of the benefits of a California
27 Infrastructure Development Corporation following termination.

28 14108. For six months following the establishment of a
29 corporation, commencing upon filing of the articles of
30 incorporation with the Secretary of State, a corporation shall be
31 on probation. While on probation, a corporation may be suspended
32 if suspension is recommended by the program manager and
33 affirmed by the executive director. This suspension is
34 nonappealable and not subject to the procedures for suspension
35 applicable to a corporation not on probation.

36 Article 6. Corporations

37
38
39 14113. The corporate powers of a corporation shall be exercised
40 by its board of directors.

1 14115. Every corporation shall provide for, and maintain a
2 central staff to perform, all administrative requirements of the
3 corporation, including all those functions required of a corporation
4 by the contract and this chapter.

5 14120. (a) A corporation shall report to the program manager,
6 or his or her designated representative, all statistical and other
7 reports required by this chapter and Chapter 6 (commencing with
8 Section 63088) of Division 1 of Title 6.7 of the Government Code.

9 (b) A corporation shall make a report to the program manager,
10 as required by Chapter 6 (commencing with Section 63088) of
11 Division 1 of Title 6.7 of the Government Code.

12
13 Article 7. Conflict of Interest
14

15 14122. It shall be unlawful for a member of the bank board or
16 for the executive director, program manager, or any person who
17 is an officer, director, contractor, or employee of a corporation, or
18 who is a member of a loan committee, or who is an employee of
19 the California Infrastructure and Economic Development Bank to
20 do any of the following:

21 (a) Ask for, consent, or agree to receive, any commission,
22 emolument, gratuity, money, property, or thing of value for his or
23 her own use, benefit, or personal advantage, for procuring or
24 endeavoring to procure for any person, partnership, joint venture,
25 association, or corporation, any loan, guarantee, financial, or other
26 assistance from any corporation.

27 (b) Borrow money, property, or to benefit knowingly, directly
28 or indirectly, from the use of the money, credit, or property of any
29 corporation.

30 (c) Make, maintain, or attempt to make or maintain, a deposit
31 of the funds of a corporation with any other corporation or
32 association on condition, or with the understanding, expressed or
33 implied, that the corporation or association receiving the deposit
34 shall pay any money or make a loan or advance, directly or
35 indirectly, to any person, partnership, joint venture, association,
36 or corporation, other than to a corporation formed under this
37 chapter.

38 14123. It shall be unlawful for a member of the bank board or
39 for the executive director, program manager, or any person who
40 is an officer or director of a corporation, or who is an employee

1 of the California Infrastructure and Economic Development Bank
2 to purchase or receive, or to be otherwise interested in the purchase
3 or receipt, directly or indirectly, of any asset of a corporation,
4 without paying to the corporation the fair market value of the asset
5 at the time of the transaction.

6 14124. Violation of any provision of this article shall constitute
7 a felony.

8 *SEC. 2. Section 63010 of the Government Code is amended to*
9 *read:*

10 63010. For purposes of this division, the following words and
11 terms shall have the following meanings unless the context clearly
12 indicates or requires another or different meaning or intent:

13 (a) “Act” means the Bergeson-Peace Infrastructure and
14 Economic Development Bank Act.

15 (b) “Bank” means the California Infrastructure and Economic
16 Development Bank.

17 (c) “Board” or “bank board” means the Board of Directors of
18 the California Infrastructure and Economic Development Bank.

19 (d) “Bond purchase agreement” means a contractual agreement
20 executed between the bank and a sponsor, or a special purpose
21 trust authorized by the bank or a sponsor, or both, whereby the
22 bank or special purpose trust authorized by the bank agrees to
23 purchase bonds of the sponsor for retention or sale.

24 (e) “Bonds” means bonds, including structured, senior, and
25 subordinated bonds or other securities; loans; notes, including
26 bond, revenue, ~~tax~~ *tax*, or grant anticipation notes; commercial
27 paper; floating rate and variable maturity securities; and any other
28 evidences of indebtedness or ownership, including certificates of
29 participation or beneficial interest, asset backed certificates, or
30 lease-purchase or installment purchase agreements, whether taxable
31 or excludable from gross income for federal income taxation
32 purposes.

33 (f) “Cost,” as applied to a project or portion thereof financed
34 under this division, means all or any part of the cost of construction,
35 renovation, and acquisition of all lands, structures, real or personal
36 property, rights, rights-of-way, franchises, licenses, easements,
37 and interests acquired or used for a project; the cost of demolishing
38 or removing any buildings or structures on land so acquired,
39 including the cost of acquiring any lands to which the buildings
40 or structures may be moved; the cost of all machinery, equipment,

1 and financing charges; interest prior to, during, and for a period
2 after completion of construction, renovation, or acquisition, as
3 determined by the bank; provisions for working capital; reserves
4 for principal and interest and for extensions, enlargements,
5 additions, replacements, renovations, and improvements; and the
6 cost of architectural, engineering, financial and legal services,
7 plans, specifications, estimates, administrative expenses, and other
8 expenses necessary or incidental to determining the feasibility of
9 any project or incidental to the construction, acquisition, or
10 financing of any project, and transition costs in the case of an
11 electrical corporation.

12 (g) "Economic development facilities" means real and personal
13 property, structures, buildings, equipment, and supporting
14 components thereof that are used to provide industrial, recreational,
15 research, commercial, utility, *goods movement*, or service enterprise
16 facilities, community, educational, cultural, or social welfare
17 facilities and any parts or combinations thereof, and all facilities
18 or infrastructure necessary or desirable in connection therewith,
19 including provision for working capital, but shall not include any
20 housing.

21 (h) "Electrical corporation" has the meaning set forth in Section
22 218 of the Public Utilities Code.

23 (i) "Executive director" means the Executive Director of the
24 California Infrastructure and Economic Development Bank
25 appointed pursuant to Section 63021.

26 (j) "Financial assistance" in connection with a project, includes,
27 but is not limited to, any combination of grants, loans, the proceeds
28 of bonds issued by the bank or special purpose trust, insurance,
29 guarantees or other credit enhancements or liquidity facilities, and
30 contributions of money, property, labor, or other things of value,
31 as may be approved by resolution of the board or the sponsor, or
32 both; the purchase or retention of bank bonds, the bonds of a
33 sponsor for their retention or for sale by the bank, or the issuance
34 of bank bonds or the bonds of a special purpose trust used to fund
35 the cost of a project for which a sponsor is directly or indirectly
36 liable, including, but not limited to, bonds, the security for which
37 is provided in whole or in part pursuant to the powers granted by
38 Section 63025; bonds for which the bank has provided a guarantee
39 or enhancement, including, but not limited to, the purchase of the
40 subordinated bonds of the sponsor, the subordinated bonds of a

1 special purpose trust, or the retention of the subordinated bonds
2 of the bank pursuant to Chapter 4 (commencing with Section
3 63060); or any other type of assistance deemed appropriate by the
4 bank or the sponsor, except that no direct loans shall be made to
5 nonpublic entities other than in connection with the issuance of
6 rate reduction bonds pursuant to a financing order or in connection
7 with a financing for an economic development facility.

8 For purposes of this subdivision, “grant” does not include grants
9 made by the bank except when acting as an agent or intermediary
10 for the distribution or packaging of financing available from
11 federal, private, or other public sources.

12 (k) “Financing order” has the meaning set forth in Section 840
13 of the Public Utilities Code.

14 (l) “Guarantee trust fund” means the California Infrastructure
15 Guarantee Trust Fund.

16 (m) “Infrastructure bank fund” means the California
17 Infrastructure and Economic Development Bank Fund.

18 (n) “Loan agreement” means a contractual agreement executed
19 between the bank or a special purpose trust and a sponsor that
20 provides that the bank or special purpose trust will loan funds to
21 the sponsor and that the sponsor will repay the principal and pay
22 the interest and redemption premium, if any, on the loan.

23 (o) “Participating party” means any person, company,
24 corporation, association, state—~~or~~, *international*, municipal
25 governmental entity, partnership, firm, or other entity or group of
26 entities, whether organized for profit or not for profit, engaged in
27 business or operations within the state and that applies for financing
28 from the bank in conjunction with a sponsor for the purpose of
29 implementing a project. However, in the case of a project relating
30 to the financing of transition costs or the acquisition of transition
31 property, or both, on the request of an electrical corporation, or in
32 connection with a financing for an economic development facility,
33 or for the financing of insurance claims, the participating party
34 shall be deemed to be the same entity as the sponsor for the
35 financing.

36 (p) “Project” means designing, acquiring, planning, permitting,
37 entitling, constructing, improving, extending, restoring, financing,
38 and generally developing public development facilities or economic
39 development facilities within the state or financing transition costs
40 or the acquisition of transition property, or both, upon approval of

1 a financing order by the Public Utilities Commission, as provided
2 in Article 5.5 (commencing with Section 840) of Chapter 4 of Part
3 1 of Division 1 of the Public Utilities Code.

4 (q) "Public development facilities" means real and personal
5 property, structures, conveyances, equipment, thoroughfares,
6 buildings, and supporting components thereof, excluding any
7 housing, that are directly related to providing the following:

8 (1) "City streets" including any street, avenue, boulevard, road,
9 parkway, drive, or other way that is any of the following:

10 (A) An existing municipal roadway.

11 (B) Is shown upon a plat approved pursuant to law and includes
12 the land between the street lines, whether improved or unimproved,
13 and may comprise pavement, bridges, shoulders, gutters, curbs,
14 guardrails, sidewalks, parking areas, benches, fountains, plantings,
15 lighting systems, and other areas within the street lines, as well as
16 equipment and facilities used in the cleaning, grading, clearance,
17 maintenance, and upkeep thereof.

18 (2) "County highways" including any county highway as defined
19 in Section 25 of the Streets and Highways Code, that includes the
20 land between the highway lines, whether improved or unimproved,
21 and may comprise pavement, bridges, shoulders, gutters, curbs,
22 guardrails, sidewalks, parking areas, benches, fountains, plantings,
23 lighting systems, and other areas within the street lines, as well as
24 equipment and facilities used in the cleaning, grading, clearance,
25 maintenance, and upkeep thereof.

26 (3) "Drainage, water supply, and flood control" including, but
27 not limited to, ditches, canals, levees, pumps, dams, conduits,
28 pipes, storm sewers, and dikes necessary to keep or direct water
29 away from people, equipment, buildings, and other protected areas
30 as may be established by lawful authority, as well as the
31 acquisition, improvement, maintenance, and management of
32 floodplain areas and all equipment used in the maintenance and
33 operation of the foregoing.

34 (4) "Educational facilities" including libraries, child care
35 facilities, including, but not limited to, day care facilities, and
36 employment training facilities.

37 (5) "Environmental mitigation measures" including required
38 construction or modification of public infrastructure and purchase
39 and installation of pollution control and noise abatement
40 equipment.

1 (6) “Parks and recreational facilities” including local parks,
2 recreational property and equipment, ~~parkways~~ *parkways*, and
3 property.

4 (7) “Port facilities” including *airports, landports, waterports,*
5 *railports*, docks, harbors, ports of entry, piers, ships, small boat
6 harbors and marinas, and any other facilities, additions, or
7 improvements in connection ~~therewith~~ *therewith that transport*
8 *good or persons*.

9 (8) “Power and communications” including facilities for the
10 transmission or distribution of electrical energy, natural gas, and
11 telephone and telecommunications service.

12 (9) “Public transit” including air and rail ~~transport of goods,~~
13 *transport*, airports, guideways, vehicles, rights-of-way, passenger
14 stations, maintenance and storage yards, and related structures,
15 including public parking facilities, *and* equipment used to provide
16 or enhance transportation by bus, rail, ferry, or other conveyance,
17 either publicly or privately owned, that provides to the public
18 general or special service on a regular and continuing basis.

19 (10) “Sewage collection and treatment” including pipes, pumps,
20 and conduits that collect wastewater from residential,
21 manufacturing, and commercial establishments, the equipment,
22 structures, and facilities used in treating wastewater to reduce or
23 eliminate impurities or contaminants, and the facilities used in
24 disposing of, or transporting, remaining sludge, as well as all
25 equipment used in the maintenance and operation of the foregoing.

26 (11) “Solid waste collection and disposal” including vehicles,
27 vehicle-compatible waste receptacles, transfer stations, recycling
28 centers, sanitary landfills, and waste conversion facilities necessary
29 to remove solid waste, except that which is hazardous as defined
30 by law, from its point of origin.

31 (12) “Water treatment and distribution” including facilities in
32 which water is purified and otherwise treated to meet residential,
33 manufacturing, or commercial purposes and the conduits, pipes,
34 and pumps that transport it to places of use.

35 (13) “Defense conversion” including, but not limited to, facilities
36 necessary for successfully converting military bases consistent
37 with an adopted base reuse plan.

38 (14) “Public safety facilities” including, but not limited to, police
39 stations, fire stations, court buildings, jails, juvenile halls, and
40 juvenile detention facilities.

1 (15) “State highways” including any state highway as described
2 in Chapter 2 (commencing with Section 230) of Division 1 of the
3 Streets and Highways Code, and the related components necessary
4 for safe operation of the highway.

5 (16) (A) ~~Military infrastructure~~, “*Military infrastructure*”
6 including, but not limited to, facilities on or near a military
7 installation, that enhance the military operations and mission of
8 one or more military installations in this state. To be eligible for
9 funding, the project shall be endorsed by the Office of Military
10 and Aerospace Support established pursuant to Section 13998.2.

11 (B) For purposes of this subdivision, “military installation”
12 means any facility under the jurisdiction of the Department of
13 Defense, as defined in paragraph (1) of subsection (e) of Section
14 2687 of Title 10 of the United States Code.

15 (17) “*Goods movement-related infrastructure*” including port
16 facilities, roads, rail, and other facilities and projects that move
17 goods, energy, and information.

18 (r) “Rate reduction bonds” has the meaning set forth in Section
19 840 of the Public Utilities Code.

20 (s) “Revenues” means all receipts, purchase payments, loan
21 repayments, lease payments, and all other income or receipts
22 derived by the bank or a sponsor from the sale, lease, or other
23 financing arrangement undertaken by the bank, a ~~sponsor~~ sponsor,
24 or a participating party, including, but not limited to, all receipts
25 from a bond purchase agreement, and any income or revenue
26 derived from the investment of any money in any fund or account
27 of the bank or a sponsor and any receipts derived from transition
28 property. Revenues shall not include moneys in the General Fund
29 of the state.

30 (t) “Special purpose trust” means a trust, partnership, limited
31 partnership, association, corporation, nonprofit corporation, or
32 other entity authorized under the laws of the state to serve as an
33 instrumentality of the state to accomplish public purposes and
34 authorized by the bank to acquire, by purchase or otherwise, for
35 retention or sale, the bonds of a sponsor or of the bank made or
36 entered into pursuant to this division and to issue special purpose
37 trust bonds or other obligations secured by these bonds or other
38 sources of public or private revenues. Special purpose trust also
39 means any entity authorized by the bank to acquire transition
40 property or to issue rate reduction bonds, or both, subject to the

1 approvals by the bank and powers of the bank as are provided by
2 the bank in its resolution authorizing the entity to issue rate
3 reduction bonds.

4 (u) “Sponsor” means any subdivision of the state or local
5 government including departments, agencies, commissions, cities,
6 counties, nonprofit corporations formed on behalf of a sponsor,
7 special districts, assessment districts, and joint powers authorities
8 within the state or any combination of these subdivisions that
9 makes an application to the bank for financial assistance in
10 connection with a project in a manner prescribed by the bank. This
11 definition shall not be construed to require that an applicant have
12 an ownership interest in the project. In addition, an electrical
13 corporation shall be deemed to be the sponsor as well as the
14 participating party for any project relating to the financing of
15 transition costs and the acquisition of transition property on the
16 request of the electrical corporation and any person, company,
17 corporation, partnership, firm, or other entity or group engaged in
18 business or operation within the state that applies for financing of
19 any economic development facility, shall be deemed to be the
20 sponsor as well as the participating party for the project relating
21 to the financing of that economic development facility.

22 (v) “State” means the State of California.

23 (w) “Transition costs” has the meaning set forth in Section 840
24 of the Public Utilities Code.

25 (x) “Transition property” has the meaning set forth in Section
26 840 of the Public Utilities Code.

27 ~~SEC. 2.~~

28 *SEC. 3.* Chapter 7 (commencing with Section 63090) is added
29 to Division 1 of Title 6.7 of the Government Code, to read:

30
31 CHAPTER 7. CALIFORNIA ECONOMIC DEVELOPMENT
32 INFRASTRUCTURE FINANCE ACT OF 2014

33
34 Article 1. Introduction

35
36 63090. (a) This chapter shall be known, and may be cited, as
37 the California Economic Development Infrastructure Act of 2014.

38 (b) Notwithstanding any other provision of this division, this
39 chapter shall not apply to any other activities, powers, and duties
40 of the bank under any of the other chapters of this division.

1 (c) Infrastructure development, enhancement, and modernization
2 is fundamental to the continued economic growth of the state. In
3 order to be successful in the integrated global economy, California
4 businesses and workers must have access to the necessary
5 infrastructure. Some of this infrastructure will be financed with
6 state moneys, while other infrastructure is more appropriately
7 funded privately.

8 (d) It is necessary to authorize the bank to serve as a conduit
9 financier, project advisor, and a project facilitator for infrastructure
10 that supports private economic development activities that provide
11 a meaningful benefit to the people of California.

12
13 Article 2. Definitions
14

15 63091. Unless the context otherwise requires, the definitions
16 in this section govern the construction of this chapter. The
17 definitions in this chapter shall apply only to this chapter and not
18 to any other provision of this division.

19 (a) “Bank” means the California Infrastructure and Economic
20 Development Bank.

21 (b) “Bank board” means the Board of Directors of the California
22 Infrastructure and Economic Development Bank.

23 (c) “California Infrastructure Development Center” means the
24 governmental unit within the bank with the administrative
25 responsibility for programs and activities authorized pursuant to
26 Chapter 1 (commencing with Section 14100) of Part 5.5 of Division
27 3 of Title 1 of the Corporations Code, and this chapter.

28 (d) “Corporation” means any California Infrastructure
29 Development Corporation created pursuant to Chapter 1
30 (commencing with Section 14100) of Part 5.5 of Division 3 of
31 Title 1 of the Corporations Code.

32 (e) “Directives and requirements” means a document adopted
33 by the bank board setting forth policy direction as well as rules
34 governing a particular subject area.

35 (f) “Executive director” means the Executive Director of the
36 California Infrastructure and Economic Development Bank.

37 (g) “Participation rights” means a commitment by the state to
38 use a corporation to deliver infrastructure projects. Participation
39 rights include the right of first refusal to participate in a public/
40 private partnership project or projects (P3 projects) and if it should

1 choose to participate, a preestablished minimum participation rate
2 in financing the P3 project or projects.

3 (h) “Program manager” means the manager of the California
4 Infrastructure Development Center as appointed by the executive
5 director of the bank.

6
7 Article 3. Purpose

8
9 63092. The bank shall include the California Infrastructure
10 Finance Center that administers the California Economic
11 Development Infrastructure Act.

12
13 Article 4. Administrative Structure

14
15 63093. (a) (1) The board shall designate one or more private
16 entities which meet the requirements of Article 4 (commencing
17 with Section 14104) of Chapter 1 of Part 5.5 of Division 3 of Title
18 1 of the Corporations Code as a California Infrastructure
19 Development Corporation.

20 (2) Upon the approval of the board, the bank may award the
21 participation rights to a California Infrastructure Development
22 Corporation, which meets the criteria in directives and requirements
23 established pursuant to subdivision (f).

24 (b) (1) A corporation designated by the board may deliver
25 infrastructure projects that have been determined by statute as
26 appropriate for financing through a public-private partnership.

27 (2) *Eligible infrastructure projects shall include goods*
28 *movement, public transit, solid waste collection and disposal,*
29 *water treatment and distribution, and defense conversion, as*
30 *defined in Section 63010.*

31 ~~(2)~~

32 (3) The contract shall state the rights and conditions of the
33 agreement. At a minimum, the agreement shall include the right
34 of first refusal to participate in each and all P3 projects the state
35 undertakes during the term of the *contract relating to the specific*
36 *type of infrastructure identified in the contract*. The agreement
37 may include, for projects the corporation agrees to participate, a
38 preestablished minimum participation rate (PR) in financing each
39 and all P3 projects.

40 ~~(3)~~

1 (4) No agreement shall be for longer than five years.

2 ~~(4)~~

3 (5) The bank may cancel a contract for fraudulent activity and
4 poor performance as set forth in the directives and requirements
5 adopted pursuant to subdivision (f).

6 (c) The award of the participation rights shall be reflected as an
7 equity investment by the state in either an individual project or the
8 California Infrastructure Cooperative.

9 (d) The bank may employ consultants and advisers as may be
10 necessary in its judgment, in connection with the award of the
11 participation rights. Payment for these services shall be reimbursed
12 from fees received from an applicant for designation under this
13 section.

14 *(e) The bank may charge a fee related to the cost of designating*
15 *and overseeing the act. Payment for consultants and advisors,*
16 *among other things, shall be reimbursed from fees received from*
17 *an applicant for designation under this section. Operation costs*
18 *for the first two years may be borrowed from other resources of*
19 *the bank and then repaid once corporations are designated and*
20 *fees become available.*

21 ~~(e)~~

22 (f) Section 10295 of, and Article 4 (commencing with Section
23 10335) of Chapter 2 of Part 2 of Division 2 of, the Public Contract
24 Code do not apply to agreements entered into by the bank in
25 connection with the award of participation rights under this chapter.

26 ~~(f)~~

27 (g) The bank board shall adopt directives and requirements
28 concerning the implementation of this chapter and pursuant to
29 Chapter 1 (commencing with Section 14100) of Part 5.5 of Division
30 3 of Title 1 of the Corporations Code. These directives and
31 requirements shall include, a process for receiving and reviewing
32 applications and entering into participation a rights agreements
33 which meet the requirements of this section.

34 ~~(g)~~

35 (h) The bank shall annually report on its activities related to the
36 duties and authorities in this section as part of the bank's annual
37 report, as required in Section 63035.

38 63094. The program manager acting under the guidance of the
39 executive director shall do all of the following:

40 (a) Administer this chapter.

1 (b) Require each corporation to submit an annual written plan
2 of operation.

3 (c) Enter into a participation rights agreements between the
4 bank and a corporation for services to be provided by the
5 corporation to state under this chapter and Chapter 1 (commencing
6 with Section 14100) of Part 5.5 of Division 3 of Title 1 of the
7 Corporations Code.

8 (d) Act as liaison between corporations, other state and federal
9 agencies, lenders, and the Legislature.

10 ~~SEC. 3.~~

11 *SEC. 4.* Section 10295 of the Public Contract Code is amended
12 to read:

13 10295. (a) All contracts entered into by any state agency for
14 (1) the acquisition of goods or elementary school textbooks, (2)
15 services, whether or not the services involve the furnishing or use
16 of goods or are performed by an independent contractor, (3) the
17 construction, alteration, improvement, repair, or maintenance of
18 property, real or personal, or (4) the performance of work or
19 services by the state agency for or in cooperation with any person,
20 or public body, are void unless and until approved by the
21 department. Every contract shall be transmitted with all papers,
22 estimates, and recommendations concerning it to the department
23 and, if approved by the department, shall be effective from the
24 date of the approval.

25 (b) This section applies to any state agency that by general or
26 specific statute is expressly or impliedly authorized to enter into
27 transactions referred to in this section.

28 (c) This section does not apply to the following:

29 (1) Any transaction entered into by the Trustees of the California
30 State University, by the Board of Governors of the California
31 Community Colleges, or by a department under the State Contract
32 Act or the California State University Contract Law.

33 (2) Any contract of a type specifically mentioned and authorized
34 to be entered into by the Department of Transportation under
35 Section 14035 or 14035.5 of the Government Code, Sections 99316
36 to 99319, inclusive, of the Public Utilities Code, or the Streets and
37 Highways Code.

38 (3) Any contract entered into by the Department of
39 Transportation that is not funded by money derived by state tax

1 sources but, rather, is funded by money derived from federal or
2 local tax sources.

3 (4) Any contract entered into by the Department of Human
4 Resources for state employee benefits, occupational health and
5 safety, training services, or combination thereof.

6 (5) Any contract let by the Legislature.

7 (6) Any contract entered into under the authority of Chapter 4
8 (commencing with Section 11770) of Part 3 of Division 2 of the
9 Insurance Code.

10 (7) Any contract entered into under the authority of Chapter 7
11 (commencing with Section 63090) of Division 1 of Title 6.7 of
12 the Government-Code. *Code for participation rights of an*
13 *infrastructure development finance corporation.*

14 ~~SEC. 4.~~

15 SEC. 5. Section 10335 of the Public Contract Code is amended
16 to read:

17 10335. (a) This article shall apply to all contracts, including
18 amendments, entered into by any state agency for services to be
19 rendered to the state, whether or not the services involve the
20 furnishing or use of equipment, materials, or supplies or are
21 performed by an independent contractor. Except as provided in
22 Sections 10295.6 and 10351, and paragraphs (8) and (9) of
23 subdivision (b) of Section 10340, all contracts subject to this article
24 are of no effect unless and until approved by the department. Each
25 contract shall be transmitted with all papers, estimates, and
26 recommendations concerning it to the department and, if approved
27 by the department, shall be effective from the date of approval.
28 This article shall apply to any state agency that by general or
29 specific statute is expressly or impliedly authorized to enter into
30 the transactions referred to in this section. This article shall not
31 apply to contracts for the construction, alteration, improvement,
32 repair, or maintenance of real or personal property, contracts for
33 services subject to Chapter 10 (commencing with Section 4525)
34 of Division 5 of Title 1 of the Government Code, to contracts that
35 are listed as exceptions in Section 10295, contracts of less than
36 five thousand dollars (\$5,000) in amount, contracts of less than
37 five thousand dollars (\$5,000) where only per diem or travel
38 expenses, or a combination thereof, are to be paid, contracts
39 between state agencies, or contracts between a state agency and
40 local agency or federal agency.

(b) In exercising its authority under this article with respect to contracts for the services of legal counsel, other than the Attorney General, entered into by any state agency that is subject to Section 11042 or Section 11043 of the Government Code, the department, as a condition of approval of the contract, shall require the state agency to demonstrate that the consent of the Attorney General to the employment of the other counsel has been granted pursuant to Section 11040 of the Government Code. This consent shall not be construed in a manner that would authorize the Attorney General to establish a separate program for reviewing and approving contracts in the place of, or in addition to, the program administered by the department pursuant to this article.

(c) Until January 1, 2001, the department shall maintain a list of contracts approved pursuant to subdivision (b). This list shall be filed quarterly with the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget. The list shall be limited to contracts with a consideration in excess of twenty thousand dollars (\$20,000) during the life of the contract and shall include sufficient information to identify the provider of legal services, the length of each contract, applicable hourly rates, and the need for the services. The department shall add a contract that meets these conditions to the list within 10 days after approval. A copy of the list shall be made available to any requester. The department may charge a fee to cover the cost of supplying the list as provided in Section 6253 of the Government Code.

(d) Contracts subject to the approval of the department shall also have the department's approval for a modification or amendment thereto, with the following exceptions:

(1) An amendment to a contract that only extends the original time for completion of performance for a period of one year or less is exempt. If the original contract was subject to approval by the department, one fully executed copy including transmittal document, explaining the reason for the extension, shall be sent to the legal office of the department. A contract may only be amended once under this exemption.

(2) Contracts let or awarded on the basis of a law requiring competitive bidding may be modified or amended only if the contract so provides or if authorized by the law requiring competitive bidding.

1 (3) If an amendment to a contract has the effect of giving the
2 contract as amended an increase in monetary amount, or an
3 agreement by the state to indemnify or save harmless any person,
4 the amendment shall be approved by the department.

5 (4) Notwithstanding subdivision (a), this article shall not apply
6 to a contract entered into pursuant under the authority of Chapter
7 7 (commencing with Section 63090) of Division 1 of Title 6.7 of
8 the Government-Code. *Code for participation rights of an*
9 *infrastructure development finance corporation.*

10 ~~SEC. 5.~~

11 *SEC. 6.* No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.